

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

**Criminal
Case No. 23/2738 SC/CRML**

BETWEEN: Public Prosecutor

AND: Lawrence Hinge Leo

Johnny Kasto Rau

Mark Motasi

Defendants

Coram: Hon. Justice Oliver A Saksak
Counsel: Ms Shirley R Langon for Public Prosecutor
Mrs Kylie Karu for the Defendants

Date of Plea:

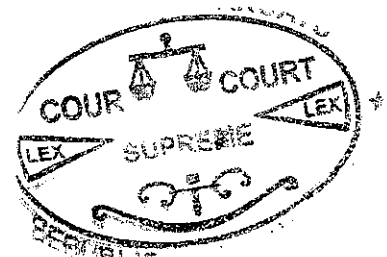
Date of Sentence: 6th day of September 2024

SENTENCE

1. Lawrence Hinge Leo and Mark Motasi were convicted of one charge each of intentional assault causing no physical damage or injury contrary to section 107 (a) of the Penal Code Act Cap 135. They both appealed against their convictions but their appeal was unsuccessful. They are therefore here for sentence today.
2. Lawrence H Leo, Mark Motasi and Johnny Kasto Rau were charged jointly with intentional assault causing permanent injuries to the body of Yozino Tariuvi and were each convicted on 26th June 2024 after a trial. They too appealed against their convictions but their appeal was dismissed by the Court of Appeal on 16th August 2024. They are for sentence today.
3. The facts are contained in the judgment of the Court published on 27 June 2024 and I need not repeat them.



4. The maximum penalty for an offence under section 107 (a) of the Penal Code is 1 year imprisonment and for an offence under section 107 (c) of the Act, the maximum penalty is 10 years imprisonment. This charge is taken as the lead offence. It is a serious charge and warrants a sentence of imprisonment to act as a deterrence, to mark the seriousness of the offending, to mark public disapproval for the assaults and to protect the community and vulnerable persons.
5. From the facts as asserted by the defendants in their defence, they were provoked into committing the acts. However the assaults were disproportionate to the degree of provocation. Their actions were not immediate to the alleged provocation. Their criminal responsibility cannot be diminished under section 27 of the Penal Code.
6. The aggravating features were that-
 - a) The assaults were repeated.
 - b) A piece of timber was used as a weapon.
 - c) Permanent injury was caused to the left hand of the victim.
 - d) The pain and suffering experienced by the victim.
 - e) The ongoing treatment of the victim requiring an overseas treatment
 - f) Additional expenses required by victim to attend overseas treatment.
 - g) A serious breach of trust to the victim as their landlord.
 - h) Lack of remorse and contrition.
 - i) There was a degree of planning involved.
7. I have seen and considered the cases referred to by the Prosecutions and defence submissions. All those cases are different on their facts and circumstances but have found helpful the lengths of sentences imposed by way of comparisons.
8. Considering all these factors together with the seriousness of the offendings, I sentence the defendants as follows-
 - a) Lawrence Hinge Leo in relation to the charge in Count 1 to a start sentence of 6 months imprisonment. And in relation to the charge in Count 3, he is sentenced to a start sentence of 4 years imprisonment. His sentences are to run concurrently for 4 years.



- b) For Mark Motasi, he is sentenced to 6 months imprisonment for the offence in dCount 2 and to 4 years imprisonment for the offence in Count 3. These sentences are also to run concurrently for 4 years.
- c) For Johnny Kasto Rau, he is sentenced to 4 years imprisonment for the offence in Count 3.
9. In mitigation I consider their clean past record, the employments of Lawrence Hinge and Johnny at the Vila Central Hospital and their good reports by the superiors, and their personal histories and other factors personal to them as shown in their pre-sentence reports, I deduct their respective sentences by 1 year.
10. Their end sentences therefore shall be 3 years imprisonment.
11. I accept the submissions by defence counsel that their sentences should be suspended. I therefore order that their end sentences be suspended under section 57 of the Penal Code Act for a period of 2 years from the date of this sentence on good behaviour. This means the defendants do not go to prison today. However they must remain offence free for 2 years. If they commit any other offences for which they would be charged and convicted, they will each go to prison to serve out their 3 years sentences.
12. In addition I sentence the three defendants to community work for 100 hours each to be performed within 12 months from the date of this sentence.
13. The defendants are required to report to the Probation Service within 72 hours from the date of this sentence for further direction.

DATED at Port Vila this 6th day of September 2024

BY THE COURT


Hon. Oliver A Saksak

Judge

